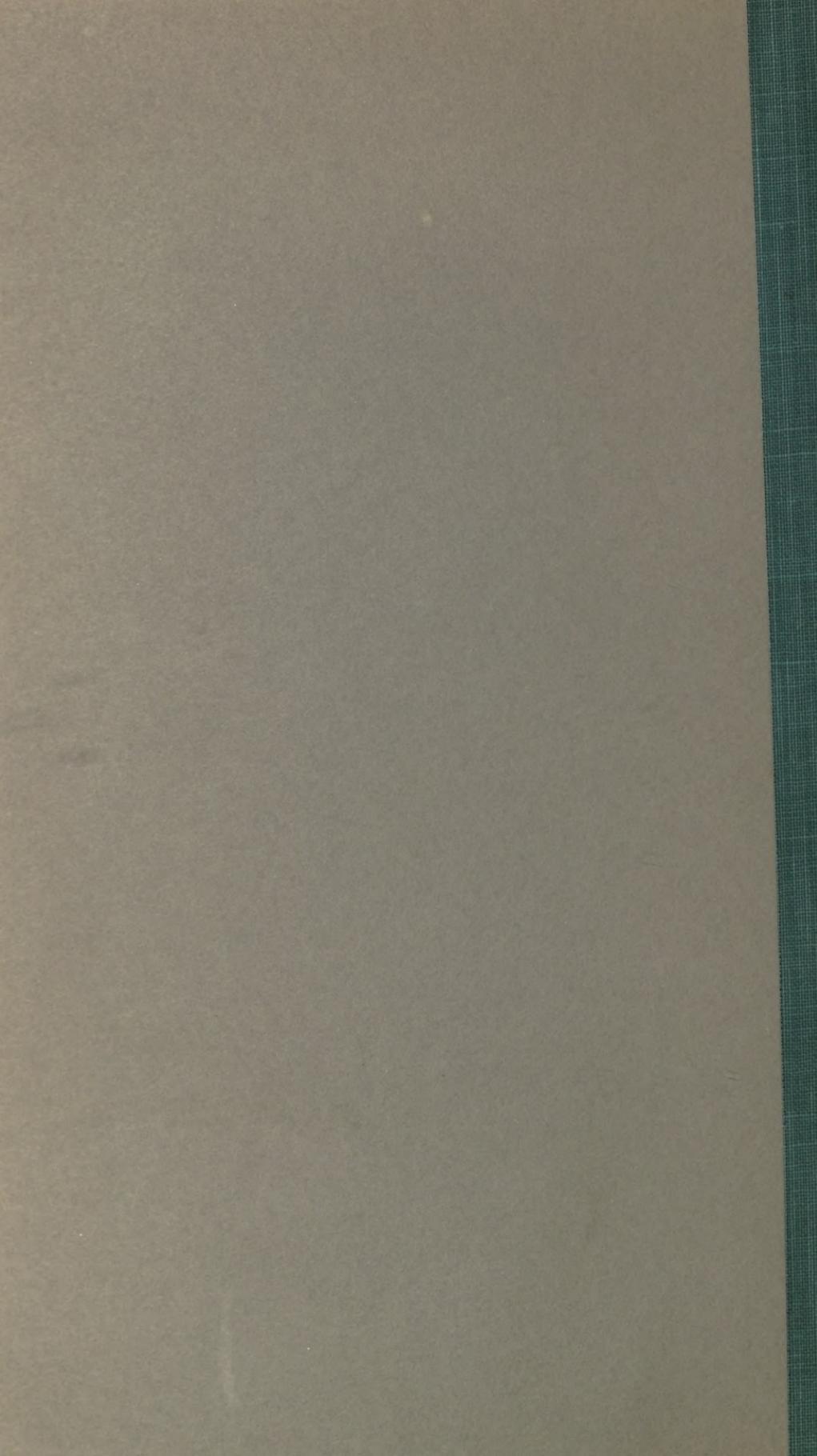
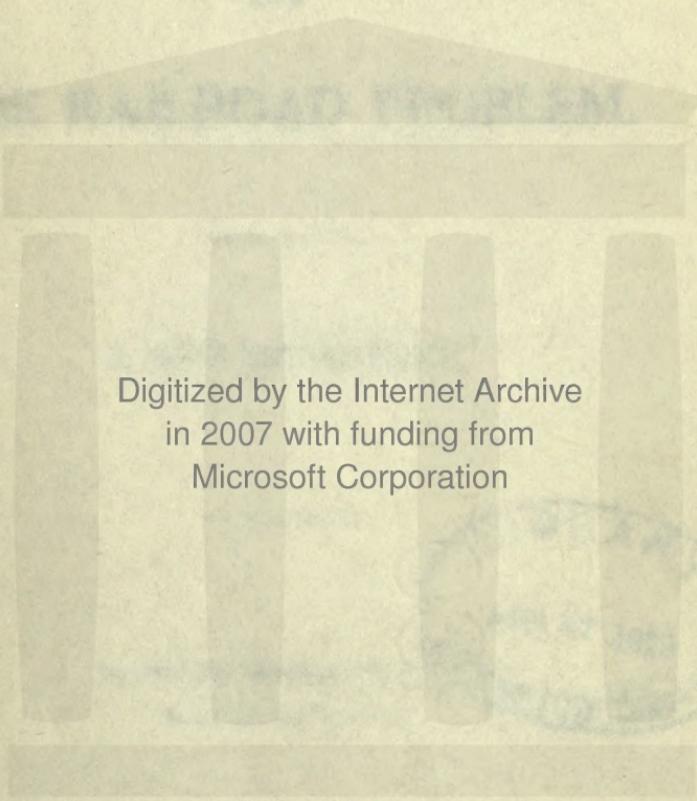


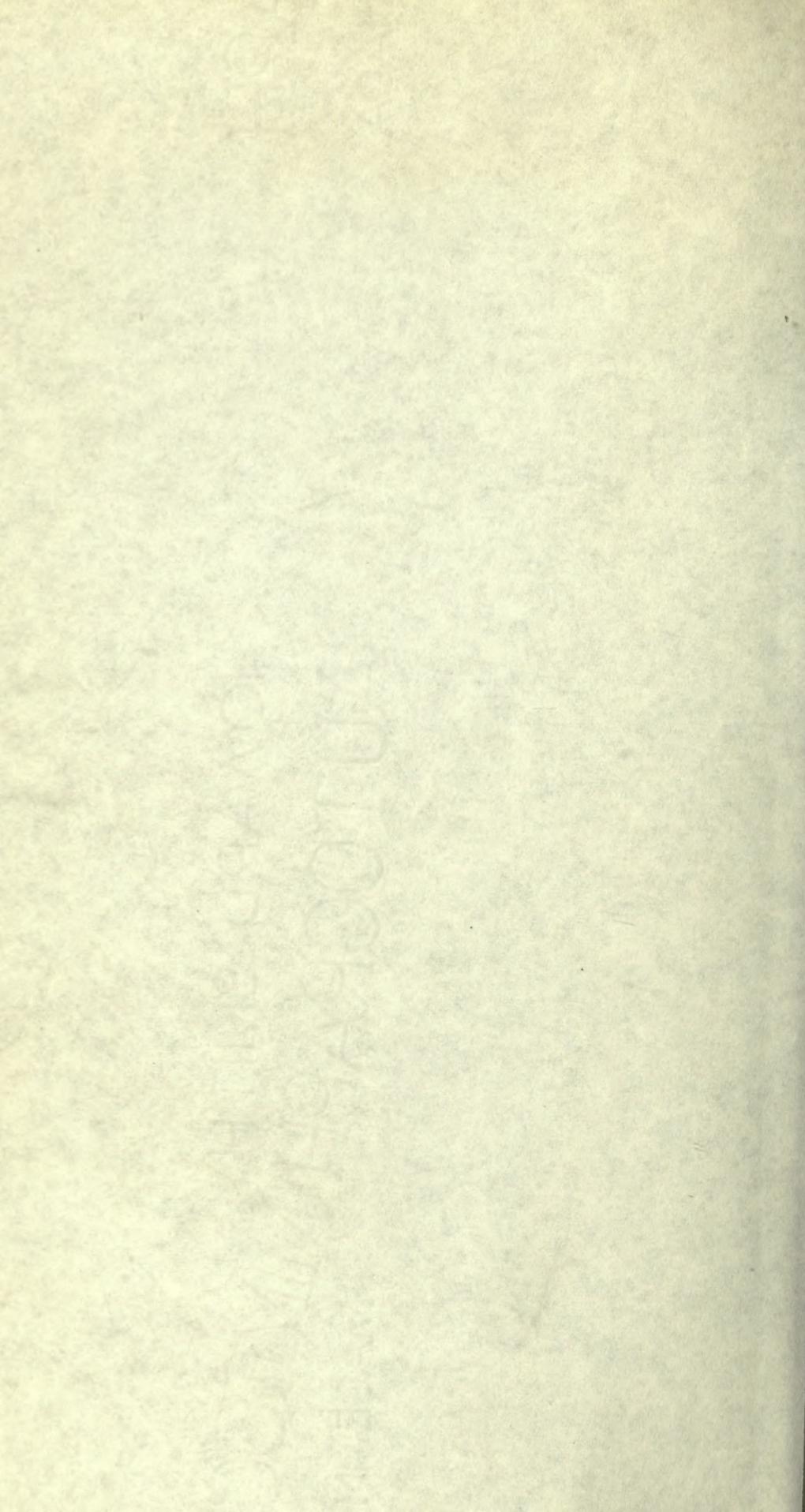
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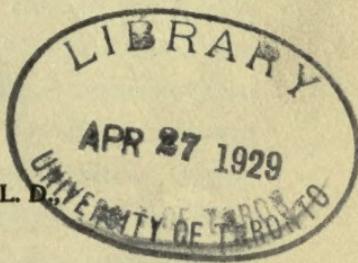


THE
POLITICAL ASPECTS
OF
THE RAILROAD PROBLEM.

A NEW DEPARTURE.

By JOSEPH NIMMO, JR., LL. D.

Statistician and Economist.



WASHINGTON, D. C.

May 30, 1908.

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Memorandum of May 30, 1908

THE
POLITICAL ASPECTS
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A NEW DEPARTURE

The problem of just and proper governmental regulation of the railroads has heretofore been based mainly upon the commercial, economic, and financial aspects of the question. To minds informed in regard to those phases of the subject such views are conclusive. But the results of experience have proved that the vast majority of our people, who perceive not the force of such reasoning from lack of knowledge of railroad affairs, have been unable to arrive at correct conclusions from the facts presented for their consideration. Besides, the masses have been deluded by the persistent teaching of persons who advocate the administration, supervision and control of railway affairs, regardless of the judicial questions involved. As the result of recent investigation and of conference with gentlemen whose lives have been devoted to the study of legal and political issues which have swayed the minds of statesmen of the present and past generations, I have been forced to consider certain important political issues which seem likely, in the future, to command the attention of the great mass of the people. Three of the more important of these political issues may be mentioned as follows:

1. THE ASSUMPTION OF LEGISLATIVE OR JUDICIAL FUNCTIONS BY AN ADMINISTRATIVE BOARD OR BUREAU.

1. The anti-American nature of the proposition to endow the Interstate Commerce Commission or any other board or bureau of the administrative government with legislative or judicial functions is apparent both to statesmen and to jurists. This was considered somewhat at length in a pamphlet entitled "Judicial and Administrative Supervision and Control of Railway Affairs," which appeared on February 8, 1908. In that paper I attempted to show the great danger of any attempt to substitute administrative for judicial determination of questions arising in the governmental regulation of the railroads and commanding the attention of the Federal judiciary. The revolutionary character of the proposition to usurp legislative functions has been noted by Mr. Justice Brewer in the following terms:

"Legislation may be turning everything over to commissions, but the courts have not yet been heard from."

He added in the same connection:

"When the matter of legislation by commission gets to the courts they will be found upholding the Constitution with the same fidelity in which it has been held since the days of John Marshall."

That the Supreme Court of the United States clearly appreciates the danger which threatens our institutions from this cause has been clearly indicated by one familiar with the tone and temper of the Federal judiciary, who has remarked to me, "it is an impending crisis." This political issue may be precipitated at any time when the right of an administrative board or bureau to exercise legislative or judicial powers under statutory authority shall be denied by the judicial power of the United States.

2. THE ASSUMPTION OF A DISPENSING POWER.

2. A second political issue, which has arisen in consequence of the introduction of the so-called Civic Federation bill (H. R. 19745 and S. 6440), is the proposed assumption of a "dispensing power" in the hands of the Chief Magistrate of the nation. This issue was suggested during the late hearings by Senator Nelson, chairman of the sub-committee of the Committee on the Judiciary of the Senate, and is noted on page 5 of my argument before that committee.

The dispensing power of the monarch of Great Britain, which was terminated by the Declaration of Right in the year 1688, was at the same time eliminated from the governmental institutions of the English speaking people of the globe. The attempt to restore it in this country by House Bill 19745 or Senate Bill 6440 will be futile.

The assumption of a dispensing power under our governmental system was repudiated by the famous author of "Constitutional Limitations," Judge Thomas M. Cooley, first chairman of the Interstate Commerce Commission. On page 119 of the First Annual Report of the Commission that great authority on constitutional law said:

"The Commission has not been given a general dispensing power to relieve hardships under the law, but its power in that regard is strictly and carefully limited."

And on page 124, in replying to a request for an order of that nature, the great jurist said:

"It could not, in fact, be made a ground for relief without giving the Commission such a general dispensing power as would not be consistent with sound principles of government."

And yet at this late day it is proposed to endow one or more branches of the Executive Department—and notably

the Commissioner of Corporations and the Interstate Commerce Commission—with dispensing powers of various sorts. Such powers are conferred by the act of June 29, 1906, the constitutionality of which have been sharply called in question, but have not been definitely determined in any case yet decided. A case, however, decided by the Supreme Court on March 23, 1908 (No. 73, October term, 1907), in which the Supreme Court rendered a unanimous decision sustaining the refusal of a circuit court to enforce an order of the Interstate Commerce Commission, seems to indicate that if a case were properly brought to its attention the Supreme Court would declare that amended section 15 and a part of amended section 20 of the act of June 29, 1906, are invalid. In the opinion rendered March 23, 1908, the Supreme Court said:

“It must be remembered that railroads are the private property of their owners; that while, from the public character of the work in which they are engaged, the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet, in no proper sense, is the public a general manager.”

This is significant.

3. THE PURPOSE TO ESTABLISH BUREAUCRATIC GOVERNMENT IN THIS COUNTRY.

3. The third political issue which has forcibly come to view in the consideration of House Bill 19745 and Senate Bill 6440 is the evident purpose to establish in this country the bureaucratic method of administration in the conduct of our governmental affairs. This is now clearly apprehended by American statesmen.

The bureaucratic method of government was a potential cause of the downfall of the Roman Empire. In all ages it

has been a hated form of tyranny. It prevails in Russia under conditions hostile to constitutional government. It is utterly incompatible with the political institutions of the English speaking people of the globe. And yet it finds clear expression in the so-called "Civic Federation Bill," which proposes to confer upon the Commissioner of Corporations and the Interstate Commerce Commission bureaucratic powers.

In the course of the hearings before the Senate Committee on the Judiciary an advocate of Senate Bill 6440 was describing the provisions of that bill when Senator Nelson, chairman, propounded to him the question, "Is NOT THAT CREATING BUREAUCRATIC GOVERNMENT?" By way of illustration the Senator pointed to the fact that in a given case he could go to the courts in his own State and there get relief, whereas under the provisions of this bill he would be obliged to go to Washington and there seek relief from an administrative officer of the government. In reply the advocate of Senate Bill 6440 was obliged to admit that such might possibly be a result of the bill which he and the Civic Federation were advocating. But that would evidently be revolutionary.

In the opinion of able constitutional lawyers and statesmen, a law involving the principles of bureaucratic government would be declared to be invalid by the Supreme Court of the United States as being opposed to the genius of our political institutions.

The foregoing political issues are believed to constitute insuperable barriers to the enactment of legislation violative of the principles of our American governmental system, and as such regarded as blunders. In a word the bill known as "The Hepburn Bill," as the "Civic Federation Bill," and as H. R. 19745 and S. 6440, was a poorly devised political scheme, badly executed, which failed of its object before both branches of Congress.

Suffice it to say that the two judiciary committees of Congress have abandoned the present consideration of the bills mentioned without report of any sort, and for no better reason, which I have been able to ascertain, than that the subject involves vast and vitally important considerations which it is impossible properly to consider during the present session of Congress.

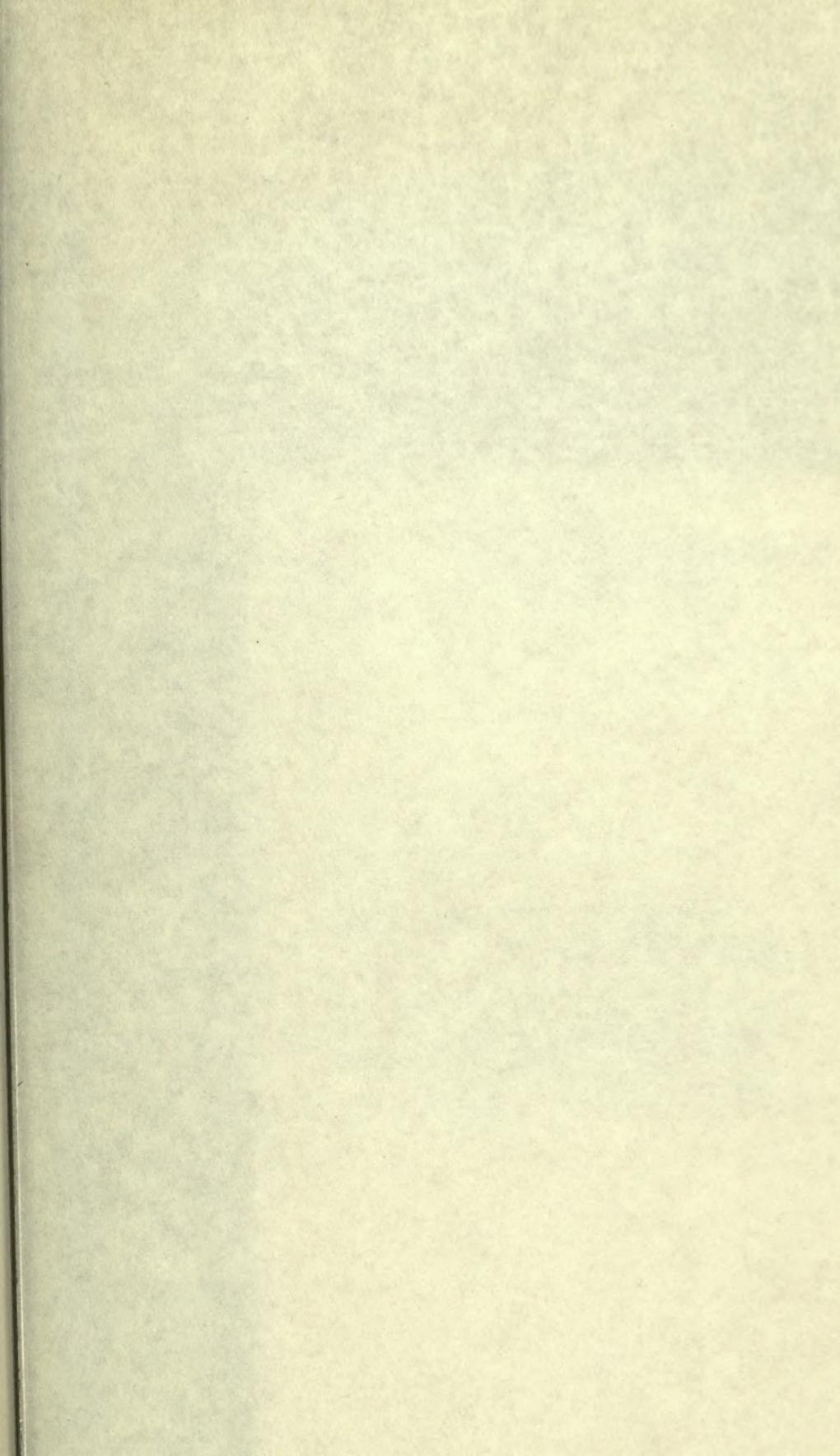
I believe that the political issues hereinbefore enumerated are clearly in the minds of American statesmen to-day, and that they will be forcefully asserted in case the so-called Civic Federation Bill shall come up for consideration at the next session of the 60th Congress.

It has been suggested that the foregoing political issues are of the politics of the future. Granted. Yet it appears probable that they may have some bearing upon the political struggles of the pending national political campaign. I believe also that they will enter into the debate upon the deferred bills at the next session of Congress. As stated in the beginning, I believe that they will have an important bearing upon the final solution of the question as to the limitations which our Government shall place upon the proper regulation of the railroads, and that they will, in practice, exert a much more potential influence upon the minds of the masses than arguments based upon the commercial, economic, or financial aspects of the question, exceedingly important as are those considerations.

JOSEPH NIMMO, JR.

1831 F ST. N. W., WASHINGTON, D. C.,

May 30, 1908.



and the other two were the joint contributions of the two
other members of the committee, and for no other
reason than that it was easier to ascertain, after their
several meetings, what the leading important considerations
were which it was necessary to consider during the present
stage of the campaign.

It is evident that the two former have been influenced mainly
by the consideration of the political situation, and that
there was little difficulty in their determining the
elements that would be the most important in the final
success of the Anti-Slavery cause.

It has been suggested that the remaining political agent
was of the opinion of the former, however. Yet it seems
to me that he was not so much influenced by the political
situation as by the general political campaign. I have
never seen any paper or document that shows more clearly
the general character of the political campaign. As usual it
had two main objects, and one of them had an important
bearing upon the question of the present day. The
other object was to support the existing political party. Now it
is evident that the former object did not play well, if
indeed it did play at all, in the Anti-Slavery cause, but it
was of great importance in the general political campaign.

Yours truly,

John C. Calhoun, Jr.

May 28, 1866

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